2 Am. Jur. 2d Administrative Law II B Refs.

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Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 103.1, 109 to 115, 314

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2 Am. Jur. 2d Administrative Law § 31

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B. Members and Officers

1. In General

§ 31. Generally

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West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 109 to 113

An administrative agency may come into existence before a majority of its members are appointed.[1] Administrative functions may be vested in interested persons[2] and in private persons.[3] Ex officio members of a public body are members for all purposes.[4]

Observation:

A state constitution does not prohibit the appointment of legislators to administrative boards and commissions. These boards and commissions, once members are appointed pursuant to valid legislative enactments in which the principles of bicameralism and presentment have been fulfilled, then may exercise all the powers that administrative agencies have traditionally exercised in both the federal and state systems of government.[5]

Footnotes

1 Liquefied Petroleum Gas Commission v. E. R. Kiper Gas Corp., 229 La. 640, 86 So. 2d 518 (1956).

2 Slocum v. Delaware, L. & W.R. Co., 339 U.S. 239, 70 S. Ct. 577, 94 L. Ed. 795 (1950).

[3] Caminetti v. Pacific Mut. Life Ins. Co. of Cal., 22 Cal. 2d 344, 139 P.2d 908 (1943).
As to the number of members necessary to exercise power, see §§ 79, 80.

[4] Louisville & Jefferson County Planning & Zoning Com'n v. Ogden, 307 Ky. 362, 210 S.W.2d 771 (1948).

[5] Almond v. Rhode Island Lottery Com'n, 756 A.2d 186 (R.I. 2000).

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2 Am. Jur. 2d Administrative Law § 32

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II. Administrative Agencies

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1. In General

§ 32. Appointment

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 109, 110

In cases where members of an administrative agency are appointed, the members must be appointed in accordance with the constitution[1] and the applicable statutes.[2] The appointing power determines the fitness of the applicant: whether or not he or she is the proper one to discharge the duties of the position. The executive power to appoint members of an agency is unaffected by the rule that the discretion entrusted to an agency must be circumscribed by reasonably definite standards. Likewise, the courts have no general supervising power over appointments.[3] However, appointments must meet the minimal legal standards necessary to comply with the requirements of the statute, and whether such requirements have been met is subject to judicial review.[4]

Footnotes

1 Board of Medical Examiners v. Steward, 203 Md. 574, 102 A.2d 248 (1954); Metropolitan Life Ins. Co. v. Boland, 281 N.Y. 357, 23 N.E.2d 532 (1939).

2 Webb v. Workers' Compensation Com'n, 292 Ark. 349, 730 S.W.2d 222 (1987); Board of Medical Examiners v. Steward, 203 Md. 574, 102 A.2d 248 (1954); Metropolitan Life Ins. Co. v. Boland, 281 N.Y. 357, 23 N.E.2d 532 (1939).

3 Sanza v. Maryland State Bd. of Censors, 245 Md. 319, 226 A.2d 317 (1967).

4 Webb v. Workers' Compensation Com'n, 292 Ark. 349, 730 S.W.2d 222 (1987).

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Works.

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1. In General

§ 33. Status

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 103.1

Particular officers and members of administrative agencies or bodies which exercise determinative powers have been declared to be executive,[1] administrative, or ministerial officers.[2] For most purposes, there is no distinction between these classifications. The terms are used interchangeably[3] in stating the general rule that such officers are not judicial officers[4] or judges.[5]

Footnotes

1 Southern Ry. Co. v. Commonwealth of Virginia ex rel. Shirley, 290 U.S. 190, 54 S. Ct. 148, 78 L. Ed. 260 (1933).

2 State v. Loechner, 65 Neb. 814, 91 N.W. 874 (1902).
As to the status of agencies in this regard, see §§ 24 to 26.

3 Southern Ry. Co. v. Commonwealth of Virginia ex rel. Shirley, 290 U.S. 190, 54 S. Ct. 148, 78 L. Ed. 260 (1933).

4 Pigeon v. Employers' Liability Assur. Corp., 216 Mass. 51, 102 N.E. 932 (1913); State v. Loechner, 65 Neb. 814, 91 N.W. 874 (1902).

5 Kentucky & I. Bridge Co. v. Louisville & N.R. Co., 37 F. 567 (C.C.D. Ky. 1889).
Administrative law judges are not subject to the constitutional requirement of elected judges. Wooley v. State Farm Fire and Cas. Ins. Co., 893 So. 2d 746 (La. 2005).

Works.

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1. In General

§ 34. Effect of change in membership

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 114.1, 115

Questions with regard to the effect of a change of membership or personnel arise in connection with the power of an agency to act initially.[1] It has been found that an agency remains the same although its members' terms of office expire, and the board is reconstituted.[2] A change in personnel occurring during the course of or at the close of an administrative hearing does not as such give rise to constitutional repugnance in a decision or order made by the administrative tribunal on the basis of the previous hearing.[3]

Footnotes

1 Board of Medical Examiners v. Steward, 203 Md. 574, 102 A.2d 248 (1954).

2 Raymond v. Fish, 51 Conn. 80, 1883 WL 1592 (1883).

3 Wilburn v. Astrue, 626 F.3d 999 (8th Cir. 2010).

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2 Am. Jur. 2d Administrative Law § 35

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II. Administrative Agencies

B. Members and Officers

2. Disqualification

a. In General

§ 35. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 314

A.L.R. Library

When will member of federal regulatory board, commission, authority, or similar body be enjoined from participating in rulemaking or adjudicatory proceeding because of "personal bias or other disqualification" under 5 U.S.C.A. sec. 556(b), 51 A.L.R. Fed. 400

The appropriate remedy for any bias, conflict of interest, or appearance of impropriety is the recusal or disqualification of the tainted adjudicator.[1]An administrative officer may be disqualified by express provision of a statute applicable to the administrative proceeding at issue.[2]In addition, although the applicable due process standards for the disqualification of administrators do not rise to the heights of those prescribed for judicial disqualification,[3]the common-law rule of disqualification extends to administrative officers exercising judicial or quasi-judicial functions[4]such that the mere appearance of impropriety by an administrative officer is to be avoided although that alone is not sufficient to mandate recusal.[5]

The Federal Administrative Procedure Act specifically provides that, in the context of a hearing, a presiding or participating employee may at any time disqualify him- or herself.[6]The Revised Model State Administrative Procedure Act provides that a presiding officer or agency head acting as a final decision maker is subject to disqualification for bias, prejudice, financial interest, ex parte communications, or any other factor that would cause a reasonable person to question the impartiality of the presiding officer or agency head.[7]The Model State Administrative Procedure Act provides that any person serving or designated to serve alone or with others as a presiding officer is subject to disqualification for bias, prejudice, interest, or any

other cause provided for in the Act or for which a judge is or may be disqualified.[8]

Practice Tip:

The party asserting grounds for the disqualification of a tainted adjudicator must timely present the objection either before the commencement of the proceeding or as soon as the disqualifying facts become known.[9]

Although agency members may be disqualified from rulemaking proceedings as well, the standards for disqualification are not always the same as in the case of adjudication. The burden of proof on parties seeking to disqualify agency members from rulemaking proceedings is higher because of the constitutionally mandated deference to an administrative agency's legislative prerogatives. Parties must support their motion to disqualify by clear and convincing evidence.[10]

Footnotes

1 In re Water Use Permit Applications, 94 Haw. 97, 9 P.3d 409 (2000).

2 In re Weston Benefit Assessment Special Road Dist. of Platte County, 294 S.W.2d 353 (Mo. Ct. App. 1956).

3 Spitz v. Board of Examiners of Psychologists, 127 Conn. App. 108, 12 A.3d 1080 (2011).
As to the disqualification of judges to act in a particular case, generally, see Am. Jur. 2d, Judges §§ 86 to 167.

4 Regan v. State Bd. of Chiropractic Examiners, 355 Md. 397, 735 A.2d 991 (1999).

5 Grant v. Senkowski, 146 A.D.2d 948, 537 N.Y.S.2d 323 (3d Dep't 1989).
As to the disqualification of hearing officers for bias, see §§ 305, 306.

6 5 U.S.C.A. § 556(b).
As to the procedure for disqualification, see § 306.
As to administrative hearings, generally, see §§ 289 to 345.

7 Revised Model State Administrative Procedure Act § 402(c) (2010).
As to disqualification for bias, generally, see §§ 38 to 40.

8 Model State Administrative Procedure Act § 4-202(b) (1981).

9 In re Public Utilities Com'n, 125 Haw. 210, 257 P.3d 223 (Ct. App. 2011).

10 Tennessee Cable Television Ass'n v. Tennessee Public Service Com'n, 844 S.W.2d 151 (Tenn. Ct. App. 1992).

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2. Disqualification

a. In General

§ 36. Effect of disqualification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 314

The general rule in the federal courts has been that, except in limited circumstances, Congress did not contemplate a grant of jurisdiction to the courts to prevent abuse or misuse of power by prior constraint,[1] and where issues relative to disqualification are essentially questions of fact, rather than law, proper occasion for court involvement is upon judicial review of agency action in order to avoid undue delay in the administrative determination. Nevertheless, some courts have found that where the issues in question are purely legal,[2] continued participation would amount to a denial of due process;[3] or upon balancing the variable factors in the case, and equity so requires,[4] an injunction is appropriate.

Some state courts adopt a less restrictive approach to injunctions. Such courts find that disqualification may furnish grounds for compelling the officer to recuse him- or herself from sitting in the proceeding if he or she does not voluntarily retire,[5] or for enjoining an officer from participation,[6] or for prohibiting a board, one member of which is disqualified, from proceeding.[7]

A determination made or participated in by a disqualified officer is merely voidable where only the common-law rule as to disqualification is violated,[8] and the proceeding is reviewable.[9] However, if participation by a disqualified officer is prohibited by statute, the determination may be void.[10]

Footnotes

1 Securities and Exchange Commission v. R. A. Holman & Co., 323 F.2d 284 (D.C. Cir. 1963).

2 Davis v. Secretary, Dept. of Health, Ed. and Welfare, 262 F. Supp. 124 (D. Md. 1967), judgment aff'd, 386 F.2d 429 (4th Cir. 1967).

[3] Amos Treat & Co. v. Securities and Exchange Commission, 306 F.2d 260 (D.C. Cir. 1962).

[4] Davis v. Secretary, Dept. of Health, Ed. and Welfare, 262 F. Supp. 124 (D. Md. 1967), judgment aff'd, 386 F.2d 429 (4th Cir. 1967); Leyden v. Federal Aviation Administration, 315 F. Supp. 1398 (E.D. N.Y. 1970).

[5] State v. Aldridge, 212 Ala. 660, 103 So. 835, 39 A.L.R. 1470 (1925).

[6] Sussel v. City and County of Honolulu Civil Service Com'n, 71 Haw. 101, 784 P.2d 867 (1989).

[7] State ex rel. Barnard v. Board of Educ. of City of Seattle, 19 Wash. 8, 52 P. 317 (1898).

[8] City of Naperville v. Wehrle, 340 Ill. 579, 173 N.E. 165, 71 A.L.R. 535 (1930); Stahl v. Board of Sup'rs of Ringgold County, 187 Iowa 1342, 175 N.W. 772, 11 A.L.R. 185 (1920).

[9] Carr v. Duhme, 167 Ind. 76, 78 N.E. 322 (1906).

[10] Stahl v. Board of Sup'rs of Ringgold County, 187 Iowa 1342, 175 N.W. 772, 11 A.L.R. 185 (1920); In re Weston Benefit Assessment Special Road Dist. of Platte County, 294 S.W.2d 353 (Mo. Ct. App. 1956).

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a. In General

§ 37. Effect of disqualification—Continuation of proceedings; application of "rule of necessity"

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 314

A.L.R. Library

Construction and Application of Rule of Necessity Providing that Administrative or Quasi-judicial Officer Is Not Disqualified to Determine a Matter Because of Bias or Personal Interest if Case Cannot Be Heard Otherwise, 28 A.L.R.6th 175

Due process considerations do not require a biased administrative agency to forego making a decision which no other entity is authorized to make.[1] Under such circumstances, the so-called "rule of necessity" permits an adjudicative body to proceed in spite of its possible bias or self-interest.[2] The rule of necessity not only allows but also requires a decision maker to act in a proceeding when he or she would otherwise be disqualified if jurisdiction is exclusive, and no provision exists for substitution.[3]

Observation:

The rule of necessity applies only in situations where the sole adjudicatory body would be precluded from carrying out its function because of disqualifications.[4] It is not implicated where recusals based on bias do not deprive the administrative body of a quorum.[5]

There are ways of relieving the injustice of permitting a biased administrative decision. Whenever the rule of necessity is invoked and the administrative decision is reviewable, the reviewing court, without altering the law about scope of review, may and probably should review with special intensity. It makes no sense to show the extreme deference of viewing the evidence in the light most favorable to an administrative body which is not completely impartial.[6]However, this does not mean that the court should undertake a de novo review.[7]The court's standard of review should be deferential, but it should also compensate for the possibility that bias may have tainted the agency's exercise of its expertise. Accordingly, the decision of a biased administrative agency acting under the rule of necessity should be upheld if the evidence presented at the administrative hearing would have entitled an objective decision maker to reach the same conclusion.[8]

Footnotes

1 Fitzgerald v. City of Maryland Heights, 796 S.W.2d 52 (Mo. Ct. App. E.D. 1990).

2 In re Water Use Permit Applications, 94 Haw. 97, 9 P.3d 409 (2000); Fitzgerald v. City of Maryland Heights, 796 S.W.2d 52 (Mo. Ct. App. E.D. 1990).

3 In re Water Use Permit Applications, 94 Haw. 97, 9 P.3d 409 (2000).

4 Valley v. Rapides Parish School Bd., 118 F.3d 1047, 38 Fed. R. Serv. 3d 408 (5th Cir. 1997); In re Water Use Permit Applications, 94 Haw. 97, 9 P.3d 409 (2000).

5 Valley v. Rapides Parish School Bd., 118 F.3d 1047, 38 Fed. R. Serv. 3d 408 (5th Cir. 1997).

6 Fitzgerald v. City of Maryland Heights, 796 S.W.2d 52 (Mo. Ct. App. E.D. 1990).

7 Barker v. Secretary of State's Office of Missouri, 752 S.W.2d 437 (Mo. Ct. App. W.D. 1988).

8 Fitzgerald v. City of Maryland Heights, 796 S.W.2d 52 (Mo. Ct. App. E.D. 1990).

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b. Particular Grounds

§ 38. Bias

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 314

A.L.R. Library

Bias or Interest of Administrative Officer Sitting in Zoning Proceeding as Necessitating Disqualification of Officer or Affecting Validity of Zoning Decision, 4 A.L.R.6th 263

When will member of federal regulatory board, commission, authority, or similar body be enjoined from participating in rulemaking or adjudicatory proceeding because of "personal bias or other disqualification" under 5 U.S.C.A. sec. 556(b), 51 A.L.R. Fed. 400

Administrative decision makers must be impartial.[1]The right to a hearing before an unbiased and impartial administrative decision maker is the basic requirement of due process and of the statutes.[2]The Federal Administrative Procedure Act provides that in administrative hearings, the functions of presiding employees and of employees participating in decisions must be conducted in an impartial manner.[3]The Revised Model State Administrative Procedure Act and the Model State Administrative Procedure Act likewise provide for the disqualification of presiding officers due to bias.[4]

Actual bias, rather than the mere potential for bias, must be shown in order to disqualify a hearing tribunal.[5]Generally, the test for bias is whether the circumstances of the case could reasonably be interpreted as having the likely capacity to tempt the official to depart from a strong public duty.[6]Bias or prejudice of an agency decision maker related to an issue of law or policy is not disqualifying; however, personal bias or prejudice going beyond sincere political and philosophical views is another matter.[7]Not all allegations of bias or prejudice are of the type that render a proceeding fundamentally unfair or require the disqualification of a decision maker.[8]To be disqualifying, the alleged bias of an administrative law judge must stem from an

extrajudicial source or must demonstrate a deep-seated antagonism or favoritism that would make a fair judgment impossible[9]and result in an opinion on the merits on some basis other than what the judge learned from participation in the case.[10]A substantial showing of personal bias is required to disqualify a hearing officer.[11]

Observation:

The test for bias in rulemaking proceedings is different than in adjudication because rulemaking is the type of proceeding where an agency member's policy biases gained from experience and expertise become an integral part of the process.[12]

CUMULATIVE SUPPLEMENT

Cases:

Due process requires that administrative proceedings in New Mexico be administered by fair and impartial triers of fact who are at a minimum, disinterested and from any form of bias or predisposition regarding outcome of case. U.S.C.A. Const.Amend. 14. Lujan v. City of Santa Fe, 89 F. Supp. 3d 1109 (D.N.M. 2015).

The rule of necessity provides a limited exception to the requirement of an unbiased adjudicator for an administrative proceeding by requiring a biased adjudicator to decide a case if and only if the dispute cannot otherwise be heard. Zlotnick v. City of Saratoga Springs, 122 A.D.3d 1210, 997 N.Y.S.2d 809 (3d Dep't 2014).

[END OF SUPPLEMENT]

Footnotes

1 Fitzgerald v. City of Maryland Heights, 796 S.W.2d 52 (Mo. Ct. App. E.D. 1990).

2 § 292.

3 5 U.S.C.A. § 556(b).
As to disqualification for bias in the hearing context, generally, see § 305.
As to the procedure for disqualification for bias in the hearing context, see § 306.

4 § 35.

5 Jones v. Connecticut Medical Examining Bd., 129 Conn. App. 575, 19 A.3d 1264 (2011), judgment aff'd, 309 Conn. 727, 72 A.3d 1034 (2013); Felder v. Charleston County School Dist., 327 S.C. 21, 489 S.E.2d 191, 120 Ed. Law Rep. 616 (1997).

6 Matter of Bergen County Utilities Authority, 230 N.J. Super. 411, 553 A.2d 849 (App. Div. 1989).

7 Colao v. County Council of Prince George's County, 109 Md. App. 431, 675 A.2d 148 (1996), aff'd, 346 Md. 342, 697 A.2d 96 (1997).

[8] Alb. Bernalillo Co. Water Utility Authority v. NMPRC, 2010-NMSC-013, 148 N.M. 21, 229 P.3d 494 (2010).

[9] Reddy v. Commodity Futures Trading Com'n, 191 F.3d 109 (2d Cir. 1999).

[10] First Nat. Monetary Corp. v. Weinberger, 819 F.2d 1334 (6th Cir. 1987).

[11] Head v. Chicago School Reform Bd. of Trustees, 225 F.3d 794 (7th Cir. 2000); St. Anthony Hosp. v. U.S. Dept. of Health and Human Services, 309 F.3d 680 (10th Cir. 2002).

[12] Tennessee Cable Television Ass'n v. Tennessee Public Service Com'n, 844 S.W.2d 151 (Tenn. Ct. App. 1992).

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b. Particular Grounds

§ 39. Bias—Prejudgment of law or facts

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 314

The standard for disqualification due to prejudgment is different in adjudication proceedings and rulemaking proceedings.[1] An administrative officer exercising judicial or quasi-judicial power is disqualified or incompetent to sit in a proceeding in which he or she has prejudged the case.[2] Any administrative decision maker who has made an unalterable prejudgment of operative adjudicative facts is considered biased.[3] The test for disqualification is whether a disinterested observer may conclude that the agency, or its members, have in some measure adjudged the facts, as well as the law, of a case in advance of hearing it.[4]

Observation:

Administrative officials may question witnesses and possess preconceived views on the legal and policy issues before them.[5] In the course of adjudicative proceedings, decision makers frequently make preliminary or collateral determinations against a party, and absent persuasive evidence of factual bias, there is no reason to assume that these decision makers thereby lose their objectivity.[6]

In rulemaking proceedings, the standard for prejudgment is not the same as in adjudications. Bias in the form of a crystallized point of view on issues of law or policy is rarely, if ever, sufficient to disqualify.[7] The standard for disqualifying an agency official from participating in rulemaking proceedings for prejudgment is substantial, and potentially disqualifying statements by an official must be considered as a whole.[8]

Footnotes

[1] Tennessee Cable Television Ass'n v. Tennessee Public Service Com'n, 844 S.W.2d 151 (Tenn. Ct. App. 1992).

[2] Head v. Chicago School Reform Bd. of Trustees, 225 F.3d 794 (7th Cir. 2000); Kramarski v. Board of Trustees of Village of Orland Park Police Pension Fund, 402 Ill. App. 3d 1040, 341 Ill. Dec. 954, 931 N.E.2d 851 (1st Dist. 2010).

[3] Valley v. Rapides Parish School Bd., 118 F.3d 1047, 38 Fed. R. Serv. 3d 408 (5th Cir. 1997); Financial Solutions and Associates v. Carnahan, 316 S.W.3d 518 (Mo. Ct. App. W.D. 2010).

[4] Board of Educ. of Rich Tp. High School Dist. No. 227 v. Illinois State Bd. of Educ., 2011 IL App (1st) 110182, 358 Ill. Dec. 285, 965 N.E.2d 13, 279 Ed. Law Rep. 391 (App. Ct. 1st Dist. 2011).

[5] In re Rattee, 145 N.H. 341, 761 A.2d 1076 (2000).

[6] Dodds v. Commission on Judicial Performance, 12 Cal. 4th 163, 48 Cal. Rptr. 2d 106, 906 P.2d 1260 (1995).

[7] Tennessee Cable Television Ass'n v. Tennessee Public Service Com'n, 844 S.W.2d 151 (Tenn. Ct. App. 1992).

[8] Housing Study Group v. Kemp, 736 F. Supp. 321 (D.D.C. 1990), order clarified, 739 F. Supp. 633 (D.D.C. 1990).

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§ 40. Bias—Proof and presumptions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 314

It is assumed that administrative decision makers will serve with fairness and integrity.[1] There is a presumption that they are objective[2] and capable of fairly judging a particular controversy on the basis of its own circumstances.[3] In addition, there is a presumption of honesty, integrity,[4] good faith,[5] and impartiality[6] in those serving as adjudicators, which presumption is only rebutted by a showing of some substantial countervailing reason to conclude that a decision maker is actually biased with respect to the factual issues being adjudicated.[7] To overcome the presumption of impartiality, the plaintiff must demonstrate either actual bias[8] or the existence of circumstances indicating a probability of bias too high to be constitutionally tolerable.[9]

CUMULATIVE SUPPLEMENT

Cases:

County employee failed to overcome presumption that hearing officer was free from bias and establish that officer prejudged charges against employee by administrator of nursing home, notwithstanding that officer presided over prior related hearing for employee. Bruso v. Clinton County, 139 A.D.3d 1169, 31 N.Y.S.3d 277 (3d Dep't 2016).

[END OF SUPPLEMENT]

Footnotes

[1] Adkins v. Sarah Bush Lincoln Health Center, 129 Ill. 2d 497, 136 Ill. Dec. 47, 544 N.E.2d 733 (1989).

[2] Simko v. Ervin, 234 Conn. 498, 661 A.2d 1018 (1995); In re Cross, 617 A.2d 97 (R.I. 1992); Voeltz v. John Morrell & Co., 1997 SD 69, 564 N.W.2d 315 (S.D. 1997).

[3] Lichoulas v. F.E.R.C., 606 F.3d 769 (D.C. Cir. 2010); Kramarski v. Board of Trustees of Village of Orland Park Police Pension Fund, 402 Ill. App. 3d 1040, 341 Ill. Dec. 954, 931 N.E.2d 851 (1st Dist. 2010).

[4] Hasie v. Office of Comptroller of Currency of U.S., 633 F.3d 361 (5th Cir. 2011); Fleming v. Civil Service Com'n of Douglas County, 280 Neb. 1014, 792 N.W.2d 871 (2011); Champlin's Realty Associates v. Tikoian, 989 A.2d 427 (R.I. 2010).

[5] Head v. Chicago School Reform Bd. of Trustees, 225 F.3d 794 (7th Cir. 2000).

[6] Gottstein v. State, Dept. of Natural Resources, 223 P.3d 609 (Alaska 2010); Morongo Band of Mission Indians v. State Water Resources Control Bd., 45 Cal. 4th 731, 88 Cal. Rptr. 3d 610, 199 P.3d 1142 (2009); State ex rel. Praxair, Inc. v. Missouri Public Service Com'n, 344 S.W.3d 178 (Mo. 2011).

[7] Harline v. Drug Enforcement Admin., 148 F.3d 1199 (10th Cir. 1998).
A party seeking to disqualify an adjudicator in administrative agency proceedings on the basis of bias or prejudice bears the heavy burden of overcoming the presumption of impartiality. Fleming v. Civil Service Com'n of Douglas County, 280 Neb. 1014, 792 N.W.2d 871 (2011).

[8] Withrow v. Larkin, 421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975); Bunnell v. Barnhart, 336 F.3d 1112 (9th Cir. 2003); Clisham v. Board of Police Com'rs of Borough of Naugatuck, 223 Conn. 354, 613 A.2d 254 (1992).

[9] Transportation General, Inc. v. Department of Ins., State of Conn., 236 Conn. 75, 670 A.2d 1302 (1996); Northwestern Bell Telephone Co., Inc. v. Stofferahn, 461 N.W.2d 129 (S.D. 1990).

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2. Disqualification

b. Particular Grounds

§ 41. Improper receipt of evidence

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 314

Although an administrative official does not become impartial or unfair merely through becoming familiar with the facts of the case through the performance of a statutory or administrative duty,[1] disqualification may result from evidence being improperly received. In such a situation, disqualification depends on the facts and circumstances of each case.[2] Some courts allow a decision maker to have a dual role as a witness at one step of the proceedings and as a member of a reviewing body at a later stage of the same proceedings.[3]

Footnotes

1 Hortonville Joint School Dist. No. 1 v. Hortonville Educ. Ass'n, 426 U.S. 482, 96 S. Ct. 2308, 49 L. Ed. 2d 1 (1976); Matter of Carberry, 114 N.J. 574, 556 A.2d 314 (1989).

2 Collura v. Board of Police Com'rs of Village of Itasca, 113 Ill. 2d 361, 101 Ill. Dec. 640, 498 N.E.2d 1148 (1986).

3 Mountain States Tel. and Tel. Co. v. Public Utilities Com'n of State of Colo., 763 P.2d 1020 (Colo. 1988).

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§ 42. Involvement in investigation or prosecution

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There is authority to the effect that an administrative officer may be disqualified from adjudication where he or she is on the investigative or prosecuting staff in the case.[1] In fact, pursuant to both the Revised Model State Administrative Procedure Act and the Model State Administrative Procedure Act, a person who has served as an investigator, prosecutor, or advocate in a contested case, or an adjudicative proceeding or in its preadjudicative stage, as the case may be, or persons subject to the authority, direction, or discretion of such person may not serve as a presiding officer or assist or advise a presiding officer in the same proceeding.[2]

Under some authority, however, agency members who participate in an investigation, particularly a nonadversarial one, are not in all cases disqualified from adjudicating.[3] When an assertion of bias is premised solely on an administrative adjudicator's exercise of both investigative and adjudicative functions, the party claiming bias must show that, under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.[4]

Footnotes

1 Amos Treat & Co. v. Securities and Exchange Commission, 306 F.2d 260 (D.C. Cir. 1962).

2 Model State Administrative Procedure Act § 4-214(a), (b) (1981); Revised Model State Administrative Procedure Act § 402(b) (2010).

[3] Withrow v. Larkin, 421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975).

[4] Hasie v. Office of Comptroller of Currency of U.S., 633 F.3d 361 (5th Cir. 2011); Moncier v. Board of Professional Responsibility, 406 S.W.3d 139 (Tenn. 2013).

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§ 43. Personal or pecuniary interest

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Bias or Interest of Administrative Officer Sitting in Zoning Proceeding as Necessitating Disqualification of Officer or Affecting Validity of Zoning Decision, 4 A.L.R.6th 263

Members of an administrative agency must be able to perform the duties of office free of an interest, personal or pecuniary, having the potential to influence their judgment.[1] Thus, an administrative officer generally is disqualified from acting as a decision maker if he or she has a personal or pecuniary interest in the proceedings.[2] The Revised Model State Administrative Procedure Act requires disqualification for "financial interest," and the Model State Administrative Procedure Act requires disqualification for "interest."[3]

A direct, personal, and substantial pecuniary interest exists requiring the disqualification of a judge or temporary administrative hearing officer when the income from judging depends upon the volume of cases an adjudicator hears and when frequent litigants are free to choose among adjudicators, preferring those who render favorable decisions.[4] A personal interest need not be pecuniary; rather, it is any interest which can be viewed as having a potentially debilitating effect on the impartiality of the decision maker.[5] An administrative official also may be disqualified where he or she has a familial relationship with one of the parties[6] or where he or she is biased, is prejudiced, or labors under personal animosity toward a party.[7]

Footnotes

1 Matter of Bergen County Utilities Authority, 230 N.J. Super. 411, 553 A.2d 849 (App. Div. 1989).

2 In re Khan, 804 N.W.2d 132 (Minn. Ct. App. 2011); Fulce v. Public Employees Retirement System of Mississippi, 759 So. 2d 401 (Miss. 2000); Appeal of the Local Government Center, Inc., 85 A.3d 388 (N.H. 2014).

3 § 35.

4 Haas v. County of San Bernardino, 27 Cal. 4th 1017, 119 Cal. Rptr. 2d 341, 45 P.3d 280 (2002).

5 Waste Management of Illinois, Inc. v. Pollution Control Bd., 175 Ill. App. 3d 1023, 125 Ill. Dec. 524, 530 N.E.2d 682 (2d Dist. 1988).

6 In re Interest of A.M., Jr., 281 Neb. 482, 797 N.W.2d 233 (2011).

7 Head v. Chicago School Reform Bd. of Trustees, 225 F.3d 794 (7th Cir. 2000).

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§ 44. Target of criticism by party involved

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Where the adjudicator in an administrative proceeding has been the target of personal abuse or criticism by an involved party, the probability of actual bias is too high to be constitutionally tolerable[1] and is grounds for disqualification.[2] Vituperative criticism of an adjudicator by a charged party prior to the filing of administrative charges may present an unacceptably high risk of creating bias on the part of the adjudicator. However, a contentious atmosphere can be expected in many administrative hearings, and an attitude bordering on partisanship, or even hostility, as reflected in exchanges between the adjudicator and the charged party does not in and of itself prove bias.[3]

Footnotes

1 Withrow v. Larkin, 421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975).

2 Matter of Carberry, 114 N.J. 574, 556 A.2d 314 (1989).

3 Fitzgerald v. City of Maryland Heights, 796 S.W.2d 52 (Mo. Ct. App. E.D. 1990).

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